of some of the money at least of the deceased transferred to the new partnership formed on 5th February 1947. In respect of the $13,000, whatever the plaintiff may have been told about it from time to time, it seems to me no proper account of it, such as should be supplied to an administrator, has been rendered. Mr. Green invited the Court specifically to state the proportions of capital it finds to have existed. On the basis and I think it is the only reasonable one there is — that the deceased's share was $13,000 and that each of the defendants was credited with $40,000 under the partnership agreement I hold that of the $80,000 the proportions held by the estate of the deceased, defendant 1 and defendant 2 respectively were $13,000, $40,000, $27,000 up to the end of 1949, and from the beginning of 1950 onwards the proportions held by the estate and defendant 2 $20,000 each. Defendant 2 admits this increase of capital. I do not think the plaintiff's claim to a 3/10th share for the deceased can be supported. As to the $10,600 I consider the plaintiff has had an accurate account of the money up to the end of 1952 in the statement attached to the defence of defendant 1. I consider this account accurate in as much as it has not been challenged, except in respect of the item of $10,000, on which issue I have found against the plaintiff, and a small cash item of $37.84, and as it is corroborated by the Ex. D3 group of receipts, I do not think, therefore, any further account should be ordered in respect of this $10,000. As far as the $2,000 is concerned it seems quite clear that the plaintiff was perfectly satisfied when this sum was credited to the pawnshop against drawings previously made by her for household expenses, and as there is no further information she can reasonably want about it, I propose to make no order in respect of it either. On the other hand in respect of the $1,000 said to have been left in the pawnshop in the name of the plaintiff there appears to be no satisfactory record.

On the basis, then, that the plaintiff in her capacity of administratrix is bound by the settlement she accepted in the beginning of 1947 before acquiring such capacity I hold that she is entitled to accounts in respect of the $13,000 and the $1,000 for the period 5th February 1947 to 31st January 1953 when the pawnshop finally closed down, and I order accordingly. Such accounts shall *inter alia* specifically show all profits from the investment and/or deposit of these moneys in the Wing Foh Pawnshop. I also direct that there shall be an enquiry as to what would be proper sums to be allowed to the defendants in respect of their personal superintendence and management of the business of the partnership between 5th February 1947 and 31st January 1953, regard being had to any remuneration the defendants may already have actually drawn for these services. There will also be an enquiry, if either party so requests, whether any and if so what part of the profits on these two sums was earned otherwise than by the user of the partnership assets including goodwill.

I would add that I think Mr. Mitra is correct in saying that the plaintiff cannot be obliged to exercise election under section 42 of the Partnership Act, 1890, until these accounts have been taken. *Flockton v. Bunning*[6] appears to be authority for this proposition. I think it would be at least premature at this stage for me to order an enquiry as to which way it would benefit the plaintiffs to exercise their option, but the plaintiffs will be at liberty to apply for such a direction if they so wish.

The defendants counterclaim against the 1st plaintiff for payments made to her is as far as it may be adjudged that any such payments were not properly made, having not been made to the administrators of the estate. Such counterclaim is based, of course, on the possibility of the defendants having to pay money twice over. After reflection I am of the opinion that, since the present trial was fought on the basis of the merits of the plaintiff's claim for accounts and since no finding has been made as to the propriety or otherwise of the payments made by the defendants, it would be premature to give any decision on the counterclaim. I make no order on them, accordingly, beyond that the defendants will be at liberty to apply for the counterclaims to be entered on the list against the first plaintiff for hearing should the situation contemplated in them actually arise. It was conceded the counterclaim could not stand as far as the second plaintiff is concerned, and as far as he is concerned they are dismissed.

The question of costs is reserved.

Order accordingly.

Solicitors: *S. C. Goho & Co.; Braddell Bros.*

PUBLIC PROSECUTOR v. LAU TING KAI

[A. Cr. J. (Wilson J.) September 5, 1955]

[K. L. — Criminal Appeal No. 33 of 1955]

Betting Ordinance, 1953, s. 4(1) — Common Gaming Houses Ordinance, 1953, s. 4 — Using a place as common betting house — Access to the public — Assisting in carrying on a public lottery — "Tikam ekor" — Character lottery.

In this case as a result of a search of the respondent's car and the drawer of a desk used by the respondent at the Railway Administrative Office where respondent was working, a number of documents were found. An expert gave evidence that the documents contained records of wagers in "tikam ekor" which was a form of betting on the result of the draw of the Turf Club lottery. The respondent was charged in Court with two alternative charges under the Betting Ordinance 1953 and a further alternative charge under the Common Gaming Houses Ordinance 1953. The charges were as follows:—

"That you on or about the 23rd day of October, 1954, at Kuala Lumpur in the State of Selangor being a person having the use of the office of the Chief Port Manager, Malayan Railway, used the same as a common betting house and that you thereby committed an offence contrary to section 4(1)(a) and punishable under section 4(1) of the Betting Ordinance, No. 47 of 1953."

"That you on or about the 23rd day of October, 1954, at Kuala Lumpur in the State of Selangor acted as a book-maker in the office of the Chief Port Manager, Malayan Railway, a place to which the public is suffered to have access and that you thereby committed an offence contrary to section 6(3)(b) and punishable under section 6(3) of the Betting Ordinance, No. 47 of 1953."

"That you on or about the 23rd day of October, 1954, at Kuala Lumpur in the State of Selangor assisted in carrying on a public lottery, namely, 100 and 1000 character lottery and that you thereby committed an offence contrary to section 4(1)(c) and punishable under section 4(1) of the Common Gaming Houses Ordinance, No. 26 of 1953."

The learned Magistrate acquitted the respondent without calling upon him for his defence.

Held: (1) the evidence showed that the general public did not have access to the office of the Chief Port Manager, Malayan Railway, and therefore the prosecution had failed to prove that the office was used as a common betting house within the definition of common betting house in the Betting Ordinance 1953; (2) there was no evidence to justify a conviction on the 2nd charge as there was no evidence to shew that the office of the Chief Port Manager, was a place to which the public was suffered to have access; (3) as on the evidence of the expert there was in the "tikam ekor" no distribution or allotment of money "tikam ekor" was not a lottery and therefore the learned Magistrate was right in holding that the prosecution had not shown a *prima facie* case on the third charge.

[Editorial Note: Attention is drawn to the decision of the Court of Appeal in Kang Yeow Hooi v. Public Prosecutor (1954) M.L.J. 233 as to when a particular lottery can be said to be still in progress.]

Case referred to:—

(1) *Public Prosecutor v. Lee Ee Teong* (1953) M.L.J. 244.

MAGISTRATE'S CRIMINAL APPEAL.

E. Brown (Federal Counsel) for the appellant.

M. N. Cumarasami for the respondent.

Wilson J.:—In this case the respondent was acquitted and discharged of two alternative charges under the Betting Ordinance, 1953, and a further alternative charge under the Common Gaming Houses Ordinance, 1953.

The respondent is an employee of the Malayan Railway and was working under Mr. Wield, who is the Assistant to the Chief Port Manager in the office of the Chief Port Manager. On the 23rd October, 1954 a Mr. Morfield, whose occupation is not stated on the record but who was presumably a police officer, together with Inspector Didar Singh, followed the respondent when he left the office in which he worked in a motor car. Mr. Morfield and the Inspector stopped the car outside the Pavilion Cinema and asked the respondent to accompany them to the High Street Police Station, which he did. On arrival at the police station a search of the car was made in the presence of the respondent. There was found under the driving seat a copy of the Straits Times dated the 23rd October, 1954. The newspaper naturally gave a list of the acceptors and probable jockeys for the races to be held at Penang on that date. There appears nothing significant in that but inside the newspaper there was a sheet of paper with numbers written on it (P2). Also, folded in the newspaper were 14 slips of paper relating, according to the witness, to the "100" and "1,000" characters (P3 to P16). Together with those were 33 slips of paper with names of horses and amounts of money (P17 to P49). The respondent was searched and there was found on him in different parts of his clothes $113 (P50), $130.60 in an envelope (P51) and $134 (P52). There was also found a diary with $20 in cash in it (P53).

Mr. Morfield then proceeded to the Railway Administrative Office and the respondent produced a key with which the witness opened a drawer at a desk which was undoubtedly used by the respondent. In it was found a copy of the Malay Mail dated the 18th June, 1954, and two sheets of typewritten paper. On the back of one of these were six names written in pencil (P55) and one sheet of blue writing paper on which was written code names (P56). Mr. Morfield did not profess to be an expert on "100" and "1,000" character lotteries and, indeed, gave no evidence as to the documents which he found other than to say that he found them.

An Assistant Commissioner of Police who gave expert evidence as to the documents found stated that he was familiar with the terms of the Betting Ordinance and Common Gaming Houses Ordinance. His experience dated back to 1939. He stated that he was familiar with the kind of gambling called "tikam ekor". There is a different term for this form of gambling in Cantonese and the Cantonese expressions mean "100" and "1,000" characters lotteries. The expert stated that people who participated in "tikam ekor" lay wagers with bookmakers forecasting the tail digits of the serial number of the big sweep ticket which will win the first prize in the big sweep run by one of the turf clubs. He stated that in the 100 category of "tikam ekor" the punter lays his bets with

reference to the last two digits only, and in the 1,000 category he lays his wager with regard to the last three digits. If his wager proves correct, the dividend paid him by the bookmaker is expected to be 70 times the wager in the 100 number category, and 700 times the wager in the 1,000 number category. The expert continued by saying that for practical purposes this form of gambling is the same as the wager on horses, and he stated that there is no such thing as odds in a lottery. He added that in a lottery one ticket of a specific number goes to one person but in "tikam ekor" more than one person may buy the same numbers. He concluded this part of his evidence by saying that "tikam ekor" is a form of gambling and in particular betting on the result of the draw of a private lottery.

He then gave evidence in regard to the exhibits found by Mr. Morfield in the possession of the respondent. He stated that exhibits P2 to P16 inclusive are records of wagers in "tikam ekor". In addition, he stated that P5, P6 & P8 contain records of wagers on horses, and that the "tikam ekor" wagers were both in 100 and 1,000 characters. According to his evidence, P17 to P49 inclusive, are records of wagers on horses, but that P22, P31, P33, P34, P35 and P39 in addition contain records of wagers in "tikam ekor". These documents he also described as betting slips, the bets of probably individual punters. He stated that P54 and P55 contained nothing of interest to him in this case. P54 was, in fact, a race programme for Ipoh in June, 1954. P55 he said had no connection at all with races, but added that P56 appeared to be part of a letter or memorandum detailing the code to be used when placing horse racing bets in writing. In cross-examination the expert stated that in "tikam ekor" there is no division of prize money nor division by lot or distribution in portion or parcel out. He said he agreed that in "tikam ekor" it is a betting transaction between the punter and the bookmaker. He expressed the opinion that there is no similarity between the mechanics of an ordinary or common lottery and the mechanics of "tikam ekor", and concluded by saying that distribution and allotment of the prize money did not appear in "tikam ekor".

At this stage I wish to state that I have personally examined the exhibits, and have not entirely relied on the expert's description of them given in evidence.

My attention has been drawn *inter alia* to the decision in the case of the *Public Prosecutor v. Lee Ee Teong*[1]. In that case the learned Judge stated as follows: — "I know, and the Magistrate knows, all about the 1,000 characters lottery; so for that matter do the majority of the adult inhabitants of this country." The learned Judge, however, added that "it is not open to any Judge or Magistrate to import his personal knowledge on the point into a criminal trial so as to help out evidence for the prosecution which would otherwise be inadequate to support a conviction." I agree with the observations of the learned Judge but would state that until this case came before me I had not heard of "tikam ekor" in particular. In the circumstances, it is necessary to consider the evidence of the expert and, of course, of the other witnesses to ascertain whether there was any evidence to support any of the three alternative charges in the absence of any evidence by the respondent who was not called upon for his defence.

The first charge was as follows:—

"That you on or about the 23rd day of October, 1954, at Kuala Lumpur in the State of Selangor being a person having the use of the office of the Chief Port Manager, Malayan Railway, used the same as a common betting house and that you thereby committed an offence contrary to section 4(1)(a) and punishable under section 4(1) of the Betting Ordinance, No. 47 of 1953."

In short, was there any evidence that the respondent used the office of the Chief Port Manager as a common betting house contrary to section 4(1)(a) of the Betting Ordinance? Section 2 of the Ordinance provides:—

"'Common betting house' means any place, to which the public or any class of the public has, or may have, access, kept or used for betting . . . . . and any place, whether the public or any class of the public has, or may have, access thereto or not, kept or used for habitual betting . . . . . ."

In my opinion it has not been proved that this office was used for habitual betting, as all the evidence relates to one day only, whatever suspicion one may have as to what may have happened on other days. In these circumstances it is necessary to consider whether the public or any class of the public has, or may have, access to the office used by the respondent. In this connection, one must consider the evidence.

Mr. Wield stated that any member of the public having business to transact has access to the office, and that if a member of the public wished to speak to a member of the staff he would be permitted to enter the office. In cross-examination he said that he had given instructions to the chief clerk that if people considered to be outsiders wished to speak to the staff his permission should be obtained but that this did not apply to a member of the staff of the Railways.

According to the evidence of Mr. Anthony Sta Maria, a clerk in the Railways, the main person who collected bets in the Railway Administration building was called Ah Thai. Who or what he is I do not know. Anthony Sta Maria wished to place a bet with the respondent which apparently had been entrusted to him by a Mr. Chong. He could not see Ah Thai

and went to the office of the respondent whom he also could not see. He therefore placed P22 on the window-sill with a request to one Valaithen to hand it to the respondent and pass it to the collector.

Haji Mohamed Akram is the chief clerk in the office of the Chief Port Manager and obviously cannot be described as a member of the public. He himself gave a betting slip on horses to the respondent with $10. But he states, and he was a witness for the prosecution, that he gave it to the respondent on the verandah of the office. That was on the 23rd October, 1954. As regards access to the office, this witness stated that "no public is allowed to come into the office without permission. The second witness (Mr. Wield) gave me this instruction." Other Railway clerks were allowed to come in with the chief clerk's permission. In re-examination he said: "Members of the public having business to transact are allowed into the office and they are immediately taken to Mr. Wield. We are very strict about members of the public coming to the office."

It is quite clear from the evidence given by the prosecution witness that the general public have not got access to this office. I am doubtful whether there is evidence to prove that members of the public having business with this office have access to it as of right. However that may be, in order to support a conviction under the first charge the prosecution must show that such persons, if any, who had the right of access were a class of the public. Having considered the meaning of the word "class" in the Concise Oxford Dictionary, I have come to the conclusion that persons having business with a certain office, even if they have access, are not a class of the public.

In these circumstances I think the learned Magistrate was quite right in holding that the prosecution had failed to show that the office of the Chief Port Manager was used on the 23rd October, 1954 as a common betting house.

The first alternative charge is as follows:—

"That you on or about the 23rd day of October, 1954, at Kuala Lumpur in the State of Selangor acted as a book-maker in the office of the Chief Port Manager, Malayan Railway, a place to which the public is suffered to have access and that you thereby committed an offence contrary to section 6(3)(b) and punishable under section 6(3) of the Betting Ordinance, No. 47 of 1953."

It is to be noted that the respondent is charged with acting as a book-maker in the office of the Chief Port Manager, a place to which the public is suffered to have access. Whether or not one reads that charge as meaning "the public or any class thereof" it follows from my decision on the first charge that I agree with the learned Magistrate that there was no evidence to justify a conviction on the first alternative charge.

The second alternative charge is as follows:—

"That you on or about the 23rd day of October, 1954, at Kuala Lumpur in the State of Selangor assisted in carrying on a public lottery, namely, 100 and 1000 character lottery and that you thereby committed an offence contrary to section 4(1)(c) and punishable under section 4(1) of the Common Gaming Houses Ordinance, No. 26 of 1953."

The only question which arises is whether on the evidence there is a *prima facie* case that the respondent was assisting in carrying on a public lottery. It is not alleged that the lottery was carried on in the Chief Port Manager's office and there can be no doubt, if "tikam ekor" is a lottery, the respondent was assisting in carrying on a public lottery by reason of the other definitions of lottery and public lottery in section 2 of the Ordinance. A lottery includes any game, etc., whereby money or money's worth is distributed or allotted in any manner depending upon or to be determined by chance or lot.

It is quite clear from the evidence of the expert that, so far as "tikam ekor" is concerned, the punter, if he won, expected $70 from the bookmaker on each ticket in the 100 character, and $700 on each ticket in the 1,000 character. This money was to be paid out irrespective of how much money had been collected. It does not appear to me that this payment out to the punter can be described as a distribution. In the meaning to be ascribed to the word "distribute" it is stated in the Concise Oxford Dictionary, *inter alia*, that it means "to give a share to each of a number", and again, "to divide into parts". That, it would appear to me to apply to a case of the distribution of a fixed sum of prize money but not to the payment by a bookmaker on a bet, whether or not the bet is on a race horse or on a number to be ascertained by chance. So far as the word "allotted" is concerned, the same dictionary states that it means "the distribution by lot", so that we come back, to the meaning of the word "distribute".

In my view, the learned Magistrate was right in the conclusions to which he came in respect of each of the three charges, and the appeal is therefore dismissed.

Appeal dismissed.

KOAY CHOOI v. REGINA

[A. Cr. J. (Spenser Wilkinson J.) August 16, 1955]

[Penang — Criminal Appeal No. 23 of 1955]

Children and Young Persons Ordinance, 1947, s. 26(1) — Unlawfully transferring permanently the control of a child for valuable consideration — Evidence of accomplices — Failure of trial Magistrate to consider